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COMMISSION ON HUMAN RIGHTS

Forty-eighth session

SUMMARY RECORD OF THE 24th MEETING
(SECOND PART*)

Held at the Palais des Nations, Geneva,
on Wednesday, 12 February 1992, at 3 p.m.

Chairman: Mr. SOLT (Hungary)
later: Mr. WALKER (Australia)

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Question of the human rights of all persons subjected to any form of detention or imprisonment, in particular:

(a) Torture and other cruel, inhuman or degrading treatment or punishment;

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* The summary record of the first part of the meeting appears as document E/CN.4/1992/24.

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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR:

(a) TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT;

(b) STATUS OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT;

(c) QUESTION OF ENFORCED OR INVOLUNTARY DISAPPEARANCES;

(d) QUESTION OF A DRAFT OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

(agenda item 10) (continued) (E/CN.4/1992/13-16, 17 and Add.1, 18 and Corr.1 and Add.1, 19/Rev.1, 20, 62 and 63; E/CN.4/1992/NGO/4 and 9; E/CN.4/1991/17, 20 and Add.1; E/CN.4/1991/NGO/22; E/CN.4/Sub.2/1991/9, 26, 28/Rev.1, 29, 30 and Add.1 to 4; A/46/46, 618 and Corr.1, 703; A/Res/46/110)

1. Mrs. RICART (Pax Romana) said that she had read with interest the seventh report of the Special Rapporteur on questions relevant to torture (A/CN.4/1992/17 and Add.1) which described his intense activities. The increase, in comparison with the previous year, in the number of Governments with which contacts had been made attested to the growing response to the work of the Commission on Human Rights throughout the world; it made it even more necessary to have the support of major information resources.

2. The effectiveness of the various mechanisms developed by the United Nations in respect of torture was demonstrated by the accession of a large number of States to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the preparation of a Code of Conduct for Law Enforcement Officials and the establishment, 10 years earlier, of the Voluntary Fund for Victims of Torture. The fact remained, however, that cases of torture and other cruel, inhuman or degrading treatment or punishment continued to occur.

3. Thus, the Christian Student Youth of Haiti had informed Pax Romana that approximately 100 students had been arrested on 12 November 1991 when they had demonstrated in protest against the coup d'état of 30 September, and had also informed it some days later that a number of them had been released but that all had suffered ill-treatment and torture. In February 1992, Pax Romana had received a communication from the same Haitian organization asking it to inform the Commission of the situation of extreme political tension prevailing in Haiti and reporting that a student had been beaten to death by members of the security forces for putting up posters depicting President Aristide. A journalist had had to be hospitalized because of the ill-treatment he had suffered while in detention.

4. The Croatian branch of the Pax Romana International Movement of Catholic Students had reported the destruction of the Franciscan monastery at Vukovar, in Croatia, and the arrest of five monks, as well as indicating its concern about the fate of its Chairman, who had been arrested in September. The latter had been released on 29 November, but the five monks were still in custody and all had been ill-treated.

21. As the international community was aware, human rights violations had continued unabated in Guatemala since 1954 when the United States had violently overthrown the democratically elected Government of Mr. Arbenz. Every day corpses were found showing visible marks of torture, bullet wounds, burns and mutilations. The majority of the victims had been arrested and had disappeared shortly beforehand and their assassins continued to enjoy complete immunity. Various sources of information indicated that military and paramilitary forces were primarily responsible, a situation which the Guatemalan Government continued to deny by means of a disinformation campaign, while feigning concern and making commitments which were routinely broken. The IAAT joined with the other non-governmental organizations which had requested the Commission on Human Rights to appoint a special rapporteur to investigate the serious human rights violations that continued to occur in Guatemala.

22. The IAAT was strongly in favour of the adoption of an optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, since it was convinced of the need to establish international machinery for the inspection of prison facilities in order to prevent torture. It hoped, however, that if the draft were adopted, it would be applied everywhere, particularly in the United States, so that the Commission could, as the Vice-President of the United States had said on 10 February 1992, speak the truth about clear violations of civil rights and civil liberties where ever they might be found and whoever might be responsible.

23. The United States was leading a politics of counter-insurgency that flagrantly violated human rights in its attempt to stifle the resistance of the peoples of the Americas to the oppressive conditions in which they lived. No one was willing to recognize that the incarceration and torture of political prisoners was part and parcel of that politics. Unless the double-standard that existed in the Commission vis-à-vis human rights violations by certain countries, and the United States in particular, was recognized and condemned, the "new world order" would be little more than a new form of oppression.

24. Mr. ITO (Japan) said that his Government deplored the persistence in many parts of the world of the practice of enforced disappearance, which was a violation of the right to life, the right to liberty, the right not to be subjected to torture and the right to judicial remedy. It was a practice that undermined human dignity. For that reason, his delegation welcomed the drafting of the declaration on the protection of all persons from enforced disappearance (E/CN.4/1992/19, Annex) and thanked the Working Group, the Sub-Commission and the non-governmental organizations involved in the drafting process.

25. The phenomenon of enforced disappearances fortunately did not occur in Japan, where there were provisions that prohibited and punished acts of arbitrary arrest and detention, as well as abduction. As those practices continued to be widespread in certain regions of the world, it was necessary to declare that they constituted serious human rights violations and a declaration, which was not legally binding, would achieve that purpose.

might stem from the fact that the international community was better informed by the machinery for monitoring human rights violations and, consequently, individuals who had cases of torture to report felt better protected as well as safeguarded by the greater transparency of societies and political regimes. It was always difficult to take the decision to accuse a Government of human rights violations and the only way of making an end to torture, a singularly sinister activity, was to instil confidence in the United Nations.

39. His delegation appealed to those countries that had not yet done so to ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for unless there were more States parties, the international community might, through passivity, become an accomplice to torture.

40. His delegation welcomed the effective manner in which the Working Group had drawn up a draft declaration on the protection of all persons from enforced disappearance, believing, like the Chairman-Rapporteur of the Group that the draft declaration was an important way of protecting individuals against enforced disappearance.

41. In Argentina, a system of compensation had been devised for the victims of detentions ordered by the executive power and the military courts, and had been adopted by the Parliament in Act No. 24043.

42. Finally, in connection with the optional protocol to the Convention against Torture, his delegation stressed the need to establish a working group to study the drafts and report to the Commission at its forty-ninth session.

43. Mr. MBURU (Kenya) stressed that fundamental rights and freedoms were never absolute in any given society. That was why the Constitution of Kenya, which guaranteed to every person the right to life, liberty, security of the person and the protection of the law, as well as freedom of conscience, of expression and of assembly and the protection of the home and other property, also established the framework within which those rights could be enjoyed.

44. Even during the fierce struggle for independence, Kenya had always opted in favour of policies devoid of any ideology. Moreover, it had on the whole upheld the virtues of constitutional Government and had never failed to organize elections regularly; even within the one party system, there had always been a high turnover of members of Parliament. In order to introduce an era of multi-party politics the Kenyan legislator had undertaken several legislative amendments, including constitutional ones, to permit the registration of several political parties. Other amendments, intended to guarantee a wider participation by the electorate, were under study.

45. The Kenyan Government was committed to respect fully the rule of law which was based on three major principles: first, no man was punishable or could be lawfully made to suffer in body or goods except for a distinct breach of law as established by the ordinary courts; second, no man was above the law but every man, whatever his rank or condition, was subject to ordinary law and amenable to the ordinary courts; third, the general principles of the Constitution were the results of judicial decisions. The essential

independence of the judiciary was therefore recognized. Until independence, in 1963, judges had held office at the pleasure of the British Crown, to which they were answerable. The first Kenyan Constitution had enhanced the security of tenure granted to judges and that aspect had been further strengthened by various constitutional amendments, particularly that of 1990 which extended increased protection to judges. The only grounds for removal of a judge was infirmity of body or mind or any other cause or conduct duly investigated by a court. The President's discretion to appoint the members of a tribunal was circumscribed by a provision stating that he could only appoint persons who were or had been high court or appeal judges, or who qualified for appointment to those posts or were members of the Bar. Security of tenure was guaranteed for judges until the retirement age of 74. Other measures had been taken to strengthen further the independence of the judiciary including designating the judiciary as a distinct and separate organization, guaranteeing proper remuneration for judges and ensuring that they were not bracketed with the Civil Service.

46. The use of torture in any form and particularly with respect to persons in police or prison custody was unlawful under the Constitution; that was not to say that there were never any instances of the use of excessive force or even of police brutality. However, in such cases, those responsible were charged with mistreatment of prisoners. Under the Criminal Procedure Code, any death in custody gave rise to an inquest, and a post-mortem, at which relatives of the deceased were represented, was mandatory. One policeman had been brought to court on the charge of mistreatment and two policemen had been charged with causing the death of two persons in custody.

47. Reforms of the prison system had been introduced, including an extramural penal employment system, which made it possible to reduce overcrowding in prisons. In Kenya, as in many countries, occasional temporary shortages of basic necessities occurred but clothing, blankets, food and medicines were provided.

48. To strengthen the competence of institutions such as the judiciary, Kenya would require some technical assistance, especially in improving the competence of the members of the judiciary, lawyers and law enforcement agencies. It also urgently needed technical expertise and looked to the international community for understanding and support.

49. Kenya had ratified the African Charter on Human and Peoples' Rights, thus taking a step forward towards the ratification of other human rights instruments which were under active consideration by the competent authorities.

50. Finally, his delegation requested the Commission that its statement should serve as a reply to the statement made by the representative of the International Human Rights Law Group in which she had cast doubts on the credibility of the Kenyan judiciary.

51. Mr. WALKER (Australia) said that torture, disappearances and arbitrary detention were among the most serious and, regrettably, some of the most widespread forms of human rights violations. Through its mechanisms, the

Commission had developed a means of responding to situations of human rights abuse which avoided confrontation and offered the potential for greater cooperation within the international community.

52. His delegation welcomed the finalization of the draft declaration on the protection of all persons from enforced disappearance. The practice of disappearances constituted a grave violation of the right to liberty and security of the person, the right not to be subjected to torture and, on many occasions, the right to life itself. While some had regretted that the declaration did not include a precise definition of disappearance, it seemed more important to his delegation that the text should be applicable to the various forms and manifestations of disappearances for which it might be difficult to devise an all-encompassing definition. The authors of the draft declaration had specified that States should ensure that enforced disappearances were offences under their criminal law, punishable by appropriate penalties. The important issue of impunity, which the Working Group had identified as one of the most important factors contributing to the phenomenon of disappearances, was dealt with in articles 6 and 7 of the draft. The central enforcement article of the declaration was article 13 which provided, inter alia, that each State should ensure that when a person alleged that another person had been subjected to enforced disappearance, that person had the right to complain to a competent and independent authority. The article went further than article 12 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by requiring that additional powers should be conferred upon the investigatory body, powers which were necessary given the nature of the crime. No such authority existed in Australia, but in those States that experienced incidents of disappearance the creation of such an authority was necessary.

53. His delegation wished to record, in regard to the wording of article 14, that in Australia persons were not presumed responsible for criminal acts and that it understood the article to refer to persons allegedly responsible for disappearances.

54. His delegation was convinced that the draft declaration was an important instrument and that by adopting it the international community would be making an unequivocable statement of its abhorrence of the phenomenon of disappearances. One might regret that a declaration dealing with such grave violations of human rights was not binding, but the definition of the standards that should be adopted by States in cases of enforced disappearances was a positive development.

55. It was only in the previous year that the number of disappearances investigated by the Working Group on Enforced or Involuntary Disappearances had appeared to be declining and it was dismaying to read in its report (E/CN.4/1992/18) that the number of documented disappearances had increased in 1991 to 4,800 cases. It was alarming to read in the report that the Working Group had only been able to process a small proportion of the 17,000 cases reported to it, owing to lack of time and staffing constraints. The great majority of the Working Group's caseload was of disappearances that had occurred in Sri Lanka where, despite the introduction by the Government of a number of measures to investigate the phenomenon, disappearances on a large scale in the north-east continued to be reported.

56. The report of the Special Rapporteur on torture (E/CN.4/1992/17) provided evidence of the dedication of the Special Rapporteur, who had made requests for urgent action in 64 cases. The Special Rapporteur raised the question of how to transform the principles and standards established in the Convention against Torture into rules of conduct and the Commission on Human Rights was duty bound to address the same question.

57. While his delegation supported the examination by the Commission on Human Rights of a proposal for an optional protocol to the Convention against Torture, it was conscious of the fact that the proposal raised a number of difficult issues. It was true that a regime of visits would be a direct and non-selective way of examining the treatment of persons subject to detention and the proposal, as submitted for consideration by delegations, did not seem to overlap with existing mechanisms. However, there were elements of the proposal which were novel and their implications should be carefully considered. The question of funding and of resource prioritization within the United Nations human rights programme, the relationship with regional instruments, the relationship with the Committee against Torture itself, the powers of the experts during their mission and the standards to be applied were all issues which needed prior study.

58. The success of initiatives such as the thematic mechanisms developed by the Commission depended on the resources made available to them and it was obvious that the Special Procedures Unit in the Centre for Human Rights was overloaded.

59. The two Special Rapporteurs on the right to a fair trial should be congratulated on producing a clear and informative report on a complex subject (E/CN.4/Sub.2/1991/29). The difficulty of the issue should not prevent States from replying to the questionnaire so as to contribute to what was an important study. In the case of Australia, where there were nine major jurisdictions, the reply had taken some time to prepare but the Special Rapporteurs could expect it shortly.

60. His delegation had welcomed the report on the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers (E/CN.4/Sub.2/1991/30). A certain number of developments had occurred, however, since the report's submission which were relevant to the Commission's consideration of its recommendations. For instance, following the adoption of General Assembly resolution 46/152, the United Nations Committee on Crime Prevention and Control had been abolished on 4 February 1992 and replaced by the Commission on Crime Prevention and Criminal Justice. Since the crime prevention and criminal justice programme must of necessity address a broad range of subjects, many of which went beyond human rights per se, it would be inappropriate to remove the branch from the Centre for Social Development and Humanitarian Affairs in Vienna.

61. His delegation emphasized the need for States to cooperate fully with the thematic mechanisms developed by the Commission on Human Rights. When their viewpoint was requested, they should reply promptly and thoroughly. Where appropriate, Governments should invite rapporteurs or representatives to visit their country and extend every cooperation to them. In that regard, it was

disturbing to see that individuals who approached, for instance, the Working Group on Disappearances or the Special Rapporteur on questions relevant to torture incurred the risk of reprisals. His delegation had participated actively in the work on the draft declaration on the rights of human rights defenders and looked forward to its adoption. The international community must indicate its concern about the victimization of those who complained of human rights violations and should encourage States to take whatever action was necessary to prevent such acts of victimization.

62. His delegation welcomed the substantial work being carried out under the auspices of the Commission on Human Rights on agenda item 10. It was heartened by the evidence of growing cooperation with the Commission's mechanisms which it hoped would be consolidated, in the first instance, by the renewal of their mandate for a further three years.

63. Mr. PASHOVSKY (Bulgaria) said that the issues relating to the prevention of torture, cruel and degrading treatment and enforced disappearances were of prime importance at the present time. It was therefore gratifying that over 60 States, including Bulgaria, were already parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Regrettably, a large number of countries had not yet acceded to that instrument and continued to use torture.

64. Having recently rejected, following free and democratic elections, the usages of a totalitarian State, Bulgaria was considering the elaboration and implementation of international human rights standards, drawing on United Nations experience in that area. Thus, the new Constitution of the Republic regulated the procedures for arrest and the Code of Criminal Procedure specified the right of any person who had been arrested or charged to avail himself of the assistance of a lawyer. Further, only the Attorney-General was empowered to authorize preventive detention and, in the terms of article 29 of the Constitution, "No one may be subjected to torture, to cruel, inhuman or degrading treatment, or to forcible assimilation". Finally, the Constitution established the independence of the judiciary as well as the primacy of the law.

65. In November 1991, Bulgaria had submitted its initial report to the Committee against Torture which had considered it and made a positive assessment of the changes introduced into Bulgarian legislation and practice. The views expressed by the members of the Committee would be taken into account by the Government in the context of the ongoing legislative reform. The Government was developing a special programme to improve the training of judges, procurators and officials of the criminal administration system in the spirit of the provisions of the Convention, and was ready to cooperate closely with United Nations international experts in that area. Further, a draft law on the police was under study in order to combat the misuse of power.

66. Bulgaria supported the drafting of an optional protocol to the Convention against Torture and strengthening international monitoring machinery in that area. Other international organizations, governmental as well as non-governmental, and particularly the Council of Europe and the International Committee of the Red Cross might join in that work.

67. His delegation welcomed the finalization by the Commission on Human Rights Working Group of the draft declaration on the protection of all persons from enforced disappearance and hoped that Bulgaria's cooperation with United Nations and other international agencies, governmental as well as non-governmental, in that area as well would be strengthened.

68. Mr. Walker (Australia) took the Chair.

69. Mr. STEEL (United Kingdom) said that, before taking up the substantive issues under agenda item 10, he wished to state that his delegation considered the oral introductions by the special rapporteurs or chairmen-rapporteurs of the various working groups to be of immense benefit.

70. He deplored, as did the representatives of a number of other delegations, the late circulation of the various documents needed for the work of the Commission. While recognizing that the Secretariat was making efforts to reduce unavoidable delays and was labouring under difficulties, he urged that the problem should be given the highest priority.

71. Turning to the consideration of item 10, he said that torture was surely the most heinous and unforgiveable of all abuses of human rights. Taken as a whole, the report on the question (E/CN.4/1992/17) necessarily made very depressing reading, although there was some comforting notes. There was evidence of an increasing dialogue and cooperation between the Special Rapporteur and individual Governments and a growing awareness on their part that an investigation by him was not to be construed as a hostile activity. He found very interesting the suggestion, in paragraph 11 of the report, that when a Government believed itself to be a victim of a smear campaign, the logical course for that Government was to invite the Special Rapporteur to visit the country and to carry out an investigation himself.

72. More generally, he considered the various specific recommendations set out in paragraph 294 of the report to be interesting. With regard to the recommendation in subparagraph (f) that places of detention should be regularly inspected by independent experts and that the institution of a treaty-based system of visits would be a highly effective preventive measure against the occurrence of torture and should therefore be seriously considered, his delegation was pleased to note that, in his oral introduction to his report, Mr. Kooijmans had been able to record that the United Kingdom Government had decided to make public the report which the Council of Europe Committee on Torture had made on its visit to the country.

73. The Working Group on Enforced or Involuntary Disappearances had produced an excellent report (E/CN.4/1992/18) which, depressing as its contents were, offered ground for optimism in that it indicated that many Governments were cooperating with the Working Group. The separate report of the Working Group's visit to Sri Lanka (E/CN.4/1992/18/Add.1) exemplified both aspects of the problem. He urged the Sri Lankan Government to accept the various recommendations made by the Working Group. It would also be very helpful if the Working Group were invited to make a return visit to Sri Lanka so that both the Government and the Commission would be able to assess how far the situation had improved and what measures still ought to be taken.

74. In the context of disappearances, he recalled that his delegation had participated actively in the drafting of the declaration on the protection of all persons from enforced disappearance (E/CN.4/1992/19/Rev.1) under the skilful guidance of its Chairman-Rapporteur, Mrs. le Fraper du Hellen. The United Kingdom would support the adoption of the declaration by the Commission for forwarding to the General Assembly through the Economic and Social Council.

75. Finally, in connection with the first report of the Working Group on Arbitrary Detention (E/CN.4/1992/20), the United Kingdom urged all Governments concerned to cooperate with the Group and it looked forward to an invaluable contribution by the Group to the work of the Commission.

76. Mr. DENHAM (Ireland) congratulated Mr. Kooijmans, the Special Rapporteur on questions relevant to torture, on his thorough, forceful and analytical presentation, which supplemented his report (E/CN.4/1992/17).

77. His delegation deplored the fact that, at the end of the twentieth century, torture and other crimes against human dignity continued to be prevalent and considered that such practices should be strongly condemned.

78. In his conclusion, the Special Rapporteur rightly emphasized the vital role played by non-governmental organizations in exposing such crimes against humanity. In particular, Amnesty International, whose symbol was a lighted candle, was a source of hope.

79. His delegation could only endorse the view of the Special Rapporteur that judicial bodies had an important role to play in protecting fundamental human rights and it reaffirmed the necessity of safeguarding their independence. It urged those bodies to assume their full responsibilities by encouraging Governments to guarantee, in accordance with international standards, the protection of their citizens against torture and other inhuman or degrading treatment.

80. His delegation considered that Mr. Kooijman's recommendations deserved serious consideration. In that context, it would recommend a further safeguard for detained persons: the video recording of any or all interrogation sessions. Applied properly and in accordance with agreed methods, such a procedure could provide an objective record and remove the threat to the victim posed by isolation and anonymity which the Special Rapporteur rightly stated were among the prerequisites for the practice of torture.

81. Ireland had ratified both the International Covenant on Civil and Political Rights and the Optional Protocol to the Covenant and took every precaution to ensure that its obligations were met in full. In that respect, his delegation was hopeful that Ireland would shortly become a party to the Convention against Torture and would proceed to ratification as quickly as possible. As an earnest of its commitment to combat that pernicious evil, his Government had contributed over a number of years to the United Nations Voluntary Fund for Victims of Torture and he was pleased to announce an increase of 75 per cent in that contribution for 1992.

82. Mr. SHAH (India) considered it regrettable that notwithstanding the existence of international standards meant to ensure that all peoples were treated with dignity, incidents of torture and other cruel, inhuman or degrading treatment as well as enforced or involuntary disappearances occurred in various parts of the world. However, many countries, like India, had national mechanisms, constitutional guarantees and an independent judiciary to assure the protection of human rights.

83. In his report (E/CN.4/1992/17), the Special Rapporteur on questions relevant to torture had pertinently addressed the need to submit precise and detailed information or allegations, since the mere transmittal of a communication should not be taken as an assumption that the allegations contained in it were true.

84. He welcomed the fact that the Commission on Human Rights was beginning to be aware of the massive violations of human rights and acts of torture, kidnapping and forced detention carried out by terrorist groups, drug traffickers and subversive elements. He regretted, however, that the amount of attention given to them was miniscule compared to that given to alleged violations by Governments which were indeed struggling to preserve the human rights of millions of citizens threatened by such groups. It was therefore necessary to bring massive and consistent pressure of world public opinion to bear on terrorists and subversives. That was where the special rapporteurs, working groups and members of the Commission on Human Rights had a responsibility which, unfortunately, had not been carried out.

85. The same comment applied to so-called human rights organizations which were rather free in their criticism of Governments which had the noble but difficult task of protecting the rights of their citizens while respecting the rule of law and the democratic principles which required them to submit themselves to monitoring by a free press and an independent judiciary. In a statement to the Commission, one of them had criticized some developing countries while absolving, by implication, other countries as well as terrorists, drug traffickers and subversives. It was no wonder, therefore, that the credibility of that organization was so low in the developing countries. The comments made on the previous day by the Permanent Representative of Turkey about the evident one-sidedness of the approach of the human rights NGOs deserved serious consideration. Democracy did not necessarily ensure the implementation of all human rights, but it was a system that enabled the individual to live in dignity and to have an opportunity to exercise his rights, including economic, social and cultural rights. If the Commission on Human Rights and the NGOs were genuinely interested in promoting human rights, they should adopt a more constructive attitude. The NGOs which were concerned only to criticize Governments, which concentrated only on certain limited aspects of human rights and were perhaps more interested in moral and material support from the Western world did not advance the cause of human rights. They had to understand that terrorism, subversion and violence by armed groups contemptuous of human rights and the rule of law constituted a growing industry which was the most dangerous threat to human rights and which derived its substance by undermining democratic Governments and societies.

86. In conclusion, he assured the Commission that his Government wished to continue its cooperation with the special rapporteurs and working groups, while drawing its attention to the inevitable delays involved in obtaining information in a federal State the size of India.

87. Mr. WIELAND (Peru) said that unless there was an effective and independent administration of justice, which was a characteristic of democratic regimes, no remedy was available to the citizen for asserting and enforcing his inalienable rights. States therefore had a natural obligation, as well as a legal obligation stemming from international commitments concluded in the field of human rights, to guarantee full respect for those rights to their citizens.

88. In Peru, the Government of President Fujimori was striving to strengthen democracy and to eliminate subversive violence in a context of respect for human rights. A climate of subversive violence had prevailed in Peru for 12 years as a result of the emergence of a group, the Shining Path, which had set itself the objective of world proletarian revolution beginning with the destruction of the Peruvian contemporary democratic State, with the financial support of drug traffickers. Such a situation did not form an ideal background for the enjoyment of human rights, but gave some inkling of the extent of the efforts that democracy had to deploy in order to protect those rights. In order to eliminate the subversive violence, the democratic Government of Peru had proposed the establishment of a peace council entrusted with submitting a national plan for pacification to the executive power. Since its inception, on 12 October, that body had discharged its duties to the full.

89. With regard to the procedures for detention, in September 1991, Decree-Law No. 685 had been promulgated, specifically authorizing access by officials of the Office of the Attorney General to police stations, prefectures and military installations as well as any other detention centre in the Republic to verify the situation of persons who had been detained or reported missing. Further, a bill under study amending Decree-Law No. 685 provided for the immediate release of the person concerned in the event of irregular detention and the establishment of a central register of detained persons for which the special authority in charge of the defence of human rights would be responsible. The development of such a register would be carried out with financial assistance from the United States Agency for International Development.

90. On the complex question of enforced or involuntary disappearances, his delegation had taken note of the fact that the report of the Working Group stated that the number of alleged disappearances had decreased noticeably in Peru compared with the previous year. His Government wished to assure the Commission that it would continue its efforts until it had brought that practice to an end. Accordingly, he supported the adoption by the Commission of the draft declaration on the protection of all persons from enforced disappearance and took the opportunity to pay a tribute to Mrs. le Fraper du Hellen, the Chairman-Rapporteur of the Working Group, for the high quality of the draft she had submitted to the Commission.

91. Finally, he wished to remind the members of the Commission that Peru would be pleased to receive any entity, whether governmental, non-governmental or intergovernmental, wishing to assess at first hand the human rights situation in the country.

92. Mrs. RUESTA DE FURTER (Venezuela) congratulated the Chairman-Rapporteurs of the Working Groups on the declaration on the protection of all persons from enforced disappearance, on Enforced and Involuntary Disappearances and on Arbitrary Detention as well as the Special Rapporteur on questions relevant to torture for their excellent introductions.

93. Recalling that the previous year her country had supported the preparation of the draft declaration on the protection of all persons from enforced disappearance and the proposal to set up a working group to examine the question, she congratulated in particular the Chairman-Rapporteur of that group, Mrs. le Fraper du Hellen, whose competence had led to the adoption by consensus of that document (E/CN.4/1992/19/Rev.1). However, she wished to point out that although her delegation considered that article 20 of the declaration concerning the abduction and adoption of children of parents subjected to enforced disappearance marked considerable progress, paragraph 2 continued to be a source of concern to it because of its possible interpretations. The superior interest of children in such a situation must prevail and each case should be studied separately, guaranteeing the overall development of the child.

94. She also welcomed the Working Group on Arbitrary Detention's intention to coordinate its work with that of other international mechanisms, particularly the Commission's special rapporteurs. She had also taken note, with great interest, of the efforts deployed by the Special Rapporteur on questions relevant to torture to coordinate and exchange information with other United Nations bodies. She wished to draw attention to the interest shown by the Special Rapporteur in general recommendation No. 19 of the Committee on the Elimination of Discrimination against Women dated 29 January 1992 and entitled "Violence against women" and the decision to continue to draw the attention of Governments to violations of the inherent dignity of women held in detention, equating them with acts of torture.

95. Venezuela, which was a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was particularly interested in the draft optional protocol relating to that Convention and in the previous year, at the request of the Costa Rican Government, had introduced draft decision 1991/107 proposing that the Commission should begin to consider the draft.

96. Finally, her delegation wished to draw attention to the significant contribution made by the Sub-Commission on Prevention of Discrimination and Protection of Minorities to the consideration of item 10 of the Commission's agenda. She singled out in particular the reports on the question of human rights and states of emergency (E/CN.4/Sub.2/1991/28/Rev.1), the right to freedom of opinion and expression (E/CN.4/Sub.2/1991/9), the independence and impartiality of the judiciary, jurors and assessors and the independence

of lawyers (E/CN.4/Sub.2/1991/30) and the right to a fair trial (E/CN.4/Sub.2/1991/29). She also commended the Sub-Commission on its concern for the application of international standards concerning the human rights of detained juveniles, reflected in resolution 1991/16. Her delegation believed that the Commission on Human Rights should consider that resolution in order to encourage the Sub-Commission to continue to explore that question.

97. Mr. JAYAWEERA (Sri Lanka) said that he wished to remind the members of the Commission that the report on his country was the outcome of an invitation extended by his Government to the Working Group; he hoped that the Commission would enable his Government to maintain that spirit of collaboration in the future. He also wished to point out that when his Government had invited the Working Group to visit Sri Lanka, it had not been unaware of the seriousness and complexity of the problems that had occurred in the country or the harsh publicity that would be given to them by the media, at the international level, following the release of the report. The Government was also aware that certain elements would subvert the findings of the Working Group for their own sectarian ends. Nevertheless, the Sri Lankan Government had wanted to demonstrate that it did not seek human rights violations deliberately any more than it sought to perpetuate poverty, malnutrition or unemployment. Finally, the report submitted to the Commission gave ample evidence of the openness of Sri Lankan society and of the quality of its democracy. The members of the Working Group themselves had reported that they had been free to go wherever they had wanted and had had unfettered access to information.

98. Whatever their magnitude, human rights violations in Sri Lanka must be seen as constituting an aberration and an interruption to the democratic process and must be dealt with as such. In dealing with the human rights issue within Sri Lankan society, one had to proceed with caution, remembering that democracy was a slow process. In that sense, the report of the Working Group, like any report that sought to encompass complex historical and sociological phenomena within a limited scope necessarily had weaknesses. Since it had not had time to examine the report in depth or to express a considered opinion upon it, his delegation hoped that the Commission would refrain from taking any decision or measure before giving Sri Lanka the possibility to exercise its right to be heard.

99. However, he wished the members of the Commission to realize that, when discussing human rights problems in Sri Lanka, one was actually talking about two distinct and separate conflict areas, removed from each other in space and in time.

100. In the first place, those violations had occurred mainly in the south of the country, and had peaked around 1989-1990. A terrorist political group calling itself the JVP had sought not only to overthrow the democratically elected Government but also to dismantle the State and even society itself. Human rights had been a casualty in a situation in which the State, various political parties and civil society had responded to the terrorist onslaught. That era was now over and various presidential committees and commissions as well as a task force were examining the fall-out from that episode. It should

be emphasized that it was that particular conflict which had brought the question of human rights in Sri Lanka into high visibility. However, one needed to remember that whereas at the time some 2,000 alleged disappearances had been reported in that area, only 40 such cases had been reported for 1991. Those figures showed evidence of remarkable progress. In that context, the Government also wished to point out that the alleged disappearances mentioned in the report should be treated as such, namely, as allegations and not as proven findings.

101. The second major area of conflict was in the north of the country, where the Working Group had reported more than 1,000 disappearances in 1991. There again, while the Government did not necessarily accept the number of disappearances as accurate, without first checking out the figures, it most emphatically deplored the phenomenon, regardless of its order of magnitude. However, it was also relevant to point out that the disappearances reported in the north of the country since 1983 had occured in conditions of organized and intense military conflict in which the security forces had been engaged in combating a terrorist group known as the Tigers, who had been described in respected international journals as "the world's most efficient killing machine".

102. His Government was studying the recommendations made by the Working Group in respect of both conflicts. In any case, some of the mechanisms recommended in the report had already been in place prior to the visit of the Working Group. Amnesty International had also made 32 recommendations similar to those made by the Working Group, and the Government had decided to implement 30 of them. In a spirit of cooperation with the United Nations and the international community, Sri Lanka currently had no objection to a further visit by the Working Group.

103. With regard to the number of disappearances in Sri Lanka, he wished to point out to the Netherlands delegation that while the Working Group itself admitted that the actual number of cases might be less than had been alleged, the openness of Sri Lankan society had allowed highly exaggerated allegations to be made, which would never have been aired in a closed society.

104. Mr. ILICAK (Observer for Turkey), speaking in exercise of the right of reply, said that in his statement on the morning of that day under agenda item 10, the representative of the Greek Cypriot community had repeated the same unfounded allegations that had been made since 1974 about persons reported missing in Cyprus. Taking advantage of the seat he occupied illegitimately as the representative of Cyprus, the latter had misinformed the Commission by claiming once again that the problem of missing persons had arisen in 1974, that it concerned only the Greek Cypriot community and that the Committee on Missing Persons in Cyprus had proved ineffective in resolving the problem. The truth was that the problem had arisen in Cyprus in 1963-1964 when the Greek Cypriot community had attacked the Turkish Cypriot community in order to destroy the bicommunal Republic of Cyprus. Since then, 211 Turkish Cypriots had been reported missing and the events of 1974 had led to further cases of disappearances in both communities. In other words, the intercommunal conflict was the main cause of the disappearances. The

Committee on Missing Persons in Cyprus which had been set up in 1981 through the good offices of the Secretary-General of the United Nations and which comprised a representative from each community and a third member appointed by the Secretary-General on the recommendation of the International Committee of the Red Cross was the proper mechanism to resolve the problem. The Turkish Cypriot side, which was unjustly denied the right of reply in the Commission on Human Rights, was known to be aware of its responsibilities towards the hundreds of families who were awaiting information and was cooperating fully with the Committee. Unfortunately, the same could not be said about the Greek Cypriot side which, since 1974, had persistently followed a policy of status quo in order to continue to exploit the situation for the purposes of political propaganda.

The meeting rose at 9.05 p.m.